

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
MAPLE LEAF INVESTORS, INC.,)
Appellant,)
vs.)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
Respondent.)

PCHB No. 60

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the appeal of the denial of a floodway construction permit, came before two members of the Pollution Control Hearings Board (James T. Sheehy, presiding officer, and Walt Woodward) at a formal hearing in the conference room of the Washington State Department of Ecology at Lacey at 9:30 a.m., June 21, 1972.

Appellant was represented by Mark S. Clark, respondent by Wick Dufford, Assistant Attorney General. Pat Martin, an Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

1 The Pollution Control Hearings Board, after reviewing the transcript
2 and exhibits and after considering Exceptions of counsel to its Proposed
3 Order, makes these

4 FINDINGS OF FACT

5 I.

6 Appellant is a Washington corporation with its principal place of
7 business within King County, Washington.

8 II.

9 Respondent is an agency of the State of Washington created and
10 existing under the provisions of Chapter 43.21A RCW and vested by said
11 chapter with the powers, duties and functions provided for in Chapter
12 86.16 RCW, the State Flood Control Zone Statute, by virtue of provisions
13 of Chapters 43.27A and 43.21 RCW.

14 III.

15 Appellant owns real property within King County, Washington, bounded
16 in part by the thread of the stream of the Cedar River, as legally
17 described in Exhibit B to appellant's Amended Notice of Appeal. Appellant
18 purchased this property in 1965 with the objective of developing a plat
19 of about 20 single family residential homesites.

20 IV.

21 Said real property of appellant lies entirely within the boundaries
22 of a State Flood Control Zone, namely, Cedar River Flood Control Zone
23 No. 3.

24 V.

25 Cedar River Flood Control Zone No. 3 was established by written
26 order describing the lands included therein, entered on July 10, 1935.

27 FINDINGS OF FACT,

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1 VI.

2 On March 11, 1971, appellant made application to respondent for a
3 permit to construct and thereafter operate and maintain a residential
4 development on the real property identified in Paragraph III above, in
5 accordance with RCW 86.16.080 and Chapter 508-60 WAC.

6 VII.

7 On March 26, 1971, the Division of Hydraulics, Department of Public
8 Works, King County, Washington, by letter to respondent, recommended
9 denial of the March 11 application.

10 VIII.

11 Pursuant to WAC 508-60-030, respondent in relation to appellant's
12 application of March 11, determined in consultation with the United
13 States Army Corps of Engineers, the boundary between floodway and
14 floodway-fringe areas on appellant's property.

15 IX.

16 On April 7, 1971, respondent by letter denied appellant's
17 application of March 11.

18 X.

19 On June 22, 1971, appellant again made application to respondent
20 for a permit to construct and thereafter operate and maintain a
21 residential development on the real property identified in paragraph III
22 above, in accordance with RCW 86.16.080 and Chapter 508-60 WAC.

23 XI.

24 On July 6, 1971, the said King County Hydraulics Division by letter
25 to respondent stated that its recommendations on the June 22 appli-
26 cation remained unchanged from theirs stated in its letter of March 26.

XII.

On August 27, 1971, respondent by letter denied appellant's application of June 22.

XIII.

Appellant filed timely appeal from respondent's denial of August 27, with the Pollution Control Hearings Board.

XIV.

Respondent properly filed a request for a formal hearing in relation to appellant's appeal.

XV.

Studies by the United States Army Corps of Engineers show the Cedar River has a long history of flooding. In 1966, the Corps of Engineers established 100-year cycle floodway and flood-fringe lines along the river.

XVI.

About 70 percent of appellant's property was included in the floodway. After on-site inspection by a team of engineers representing the Corps of Engineers, the Hydraulics Division of the King County Department of Public Works and the Flood Control Division of the Washington State Department of Ecology, about 30 percent of appellant's property was verified as being situated in a flood-fringe area.

XVII.

A datum survey map of appellant's property, prepared by appellant's civil engineer at the suggestion of the Hydraulics Division of the King County Department of Public Works, verified that elevations of the subject land conformed to the floodway and flood-fringe designations

1 adopted by the Corps of Engineers.

2 XVIII.

3 The soil of much, if not all, of appellant's property is alluvial.

4 XIX.

5 In twice denying appellant's permit application, respondent acted
6 not only on its own investigation and judgment, but relied also on the
7 substantiating findings made by both the United States Army Corps of
8 Engineers and the Hydraulics Division of the King County Department of
9 Public Works.

10 From these findings, from a study of briefs on issues of law
11 presented by counsel and after consideration of Exceptions by counsel to
12 its Proposed Order, the Pollution Control Hearings Board comes to these

13 CONCLUSIONS

14 I.

15 The application of Chapter 86.16 RCW and rules and regulations
16 thereunder to appellant do not violate substantive due process.

17 II.

18 The denial of appellant's application was not an exercise of
19 regulatory power exceeding the statutory grant.

20 III.

21 The application of the statute and regulations thereunder to
22 appellant and the permit denial do not deny equal protection of the laws

23 IV.

24 Chapter 86.16 RCW is police power legislation and the application
25 of Chapter 86.16, the regulations thereunder and the permit denial
26 herein constituted a reasonable exercise of the police power and, thus,

27 FINDINGS OF FACT,

CONCLUSIONS AND ORDER

1 no unconstitutional taking or damaging has occurred.

2 V.

3 The notice provisions for the establishment of a flood control zone
4 under Chapter 86.16 RCW are sufficient to meet the demands of due process
5 of law.

6 VI.

7 For the following reasons, it is difficult to understand appellant's
8 claim of surprise in a determination by three governmental agencies
9 (federal, county and state) that subject property lies in a floodway and
10 is, therefore, unsuitable for development as a single family residential
11 plat:

12 (a) The Cedar River has a long history of flooding;

13 (b) The soil of subject property is alluvial; and

14 (c) Thirty years prior to purchase of subject property by appellant
15 the Flood Control Zone Act was adopted and the Cedar River
16 Flood Control Zone No. 3 was established.

17 VII.

18 The authority granted by the Washington State Legislature to the
19 Department of Ecology to deny permits for the construction of single
20 family residences in floodways is a reasonable exercise of the police
21 power. Permanent structures built in floodways not only are a menace
22 themselves, and thus imperil their own occupants, but become dangerous
23 to other persons as well as to other private and public property when
24 serious floods occur. The damage to property and life in such natural
25 catastrophes is well known and most recently was emphasized again this
26 State in the 1972 flooding of the Okanogan River.

27 FINDINGS OF FACT,
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VIII.

The application of RCW 86.16, the rules and regulations promulgated thereunder, and respondent's denials of appellant's applications were not unreasonable exercises of the State's police power as applied to appellant's property. Respondent's actions in this matter were not arbitrary and capricious. To the contrary, and especially in view of the carnage wrought recently by river floods in this State and elsewhere, it would appear that respondent (as well as the Federal Corps of Engineers and King County's Department of Public Works) acted wisely and prudently in establishing and enforcing floodway parameters along the Cedar River.

Therefore, the Pollution Control Hearings Board issues this

ORDER

The appeal is denied and the actions of respondent in this matter are affirmed.

DONE in Olympia, Washington this 5th day of December, 1972.

POLLUTION CONTROL HEARINGS BOARD

Walt Woodward
WALT WOODWARD, Chairman

James T. Sheehy
JAMES T. SHEEHY, Member

Matthe W. Hill
MATTHE W. HILL, Member